

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

THOMAS STEVEN FLAHERTY,
ADC #115819

PLAINTIFF

V.

2:12CV00103 BSM/JTR

AVERY G. COX, Corporal,
East Arkansas Regional Unit, ADC

DEFENDANT

ORDER

Plaintiff, Thomas Steven Flaherty, has filed this *pro se* § 1983 action alleging that Defendant Cox used excessive force against him on February 21, 2012. An Evidentiary Hearing/Trial on the merits of that claim is scheduled for August 20, 2013.

Plaintiff has filed a Witness List stating that he would like to call Corporal Auther B. Witherspoon, who allegedly witnessed the February 21, 2012 incident. *See* Docs. #40 and #43. Defendants have informed the Court that Mr Witherspoon has retired from the ADC, and they have provided his last known mailing address. *See Sealed Exhibit to this Order.* The Court will direct the Clerk to issue a trial subpoena for Mr. Witherspoon at that sealed address.

Plaintiff also has listed Nurse Jacqueline Rhodes Carswell as a potential witness. *See* Doc. #40. According to Plaintiff, Ms. Carswell "prescribed foot wear

cause of my feet damage from the assault." *Id.*

In his Complaint and Amended Complaint, Plaintiff alleges that Defendant Cox injured his left *hand* when he hit it several times with a bar key. *See* Docs. #2 and #6. Plaintiff does not allege that *Defendant Cox* caused any injuries to his *feet*.

Instead, Plaintiff alleged that former Defendant Washington subjected him to cruel and unusual punishment when he seized Plaintiff's prescriptive footwear while he was on behavior control for three days following Plaintiff's altercation with Defendant Cox. *Id.* The Court has already dismissed that claim and Defendant Washington from this case. *See* Docs. #9 and #13. Because it does not appear that Plaintiff is alleging that Defendant Cox (who is the only remaining Defendant) caused any injuries to his feet, there is no need to call Nurse Carswell as a witness. Thus, the Court will not issue a trial subpoena for her at this time.

However, if Plaintiff believes that Nurse Carswell, or any other individuals, have relevant testimony about *Defendant Cox's* February 21, 2012 use of force or the injuries *Defendant Cox* allegedly caused during that incident, Plaintiff should file, before the July 31, 2013 deadline (*see Scheduling Order*, Doc. 39 at ¶ 4), a revised Witness List that: (1) provides the names and addresses of any additional witnesses he would like to call at the August 20, 2013 hearing; and (2) explains the testimony each additional witness is likely to provide.

In his Exhibit List, Plaintiff states that he would like to introduce into evidence a video recording of the February 21, 2012 incident. *See* Doc. #41. Defense counsel has informed the Court that: (1) it has a copy of that recording; (2) Plaintiff has previously reviewed that recording; and (3) they will bring the recording to the August 20, 2013 Evidentiary Hearing/Trial. Defendants must provide a copy of that recording to the Court on or before August 13, 2013 deadline. *See Scheduling Order*, Doc. 39 at ¶ 4.

IT IS THEREFORE ORDERED THAT the Clerk is directed to prepare a trial subpoena for Mr. Witherspoon to testify at the August 20, 2013 Evidentiary Hearing/Trial. Mr. Witherspoon's **sealed** private address must be **REDACTED** from the return of service or any other public portion of the record.

Dated this 18th day of July, 2012.


UNITED STATES MAGISTRATE JUDGE